

IN THE HIGH COURT OF JHARKHAND AT RANCHI
L.P.A. No. 89 of 2023

Rajani Kanta Patra, aged about 71 years, son of Late Kashi Nath Patra,
resident of Balia, P.O. Balia, P.S. Balasore, District Balasore, Orissa.

... .. Appellant

Versus

1. The Union of India, through the Secretary, Ministry of Home Affairs,
Government of India at North Block, P.O., P.S. & District-New Delhi.
2. The Directorate General, Central Industrial Security Force, Ministry of
Home Affairs at Block No. 13, CGO Complex, Lodhi Road, P.O., P.S. &
District-New Delhi.
3. The Deputy Inspector General (Personnel), Central Industrial Security
Force, Ministry of Home Affairs at Block No. 13, CGO Complex, Lodhi
Road, P.O., P.S. & District-New Delhi.
4. The Deputy Inspector General (Legal), Central Industrial Security
Force, Ministry of Home Affairs at Block No. 13, CGO Complex, Lodhi
Road, P.O., P.S. & District-New Delhi. Respondents

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

For the Appellant : Mr. Rahul Kumar, Advocate
For the Respondents : Mr. Anil Kumar, ASGI
Mrs. Nikki Sinha, CGC

Reserved On: - 02.01.2025

Delivered On: - 14.01.2025

M. S. Ramachandra Rao, C.J. (Oral)

This appeal is preferred by the appellant aggrieved by the judgment
dated 21.10.2022 of the learned Single Judge in W.P. (S) No. 3274 of 2020.

The case of the Writ Petitioner

2. The appellant, when he was posted as Assistant Commandant, CISF,
BSL, was served a charge memo dt. 07.12.2010 alleging that he committed
an act of misconduct on 03.10.2008 commenting about the caste (SC) of an
Inspector in front of an ASI and that he again on 16.04.2009 used, insulting
and intimidating remarks in his office on the same person, mentioning his
caste in front of another ASI, with intent to humiliate him.

3. The appellant retired from the CISF on 31.01.2011 but even prior
thereto vide order dt. 07.01.2011, he was informed that enquiry would

continue against him even after his superannuation under Rule 9 of the Central Civil Service (Pension) Rules, 1972.

4. Challenging the charge memo and initiation of departmental proceedings, the appellant had filed W.P. (S) No. 4100 of 2011.

5. It appears that the complainant had also filed a criminal complaint being Complaint Case No. 328 of 2009 dt. 04.07.2009 before the Chief Judicial Magistrate, Bokaro against the appellant alleging that the appellant had committed an offence under Section 3 (i) (x) of the SC/ST (Prevention of Atrocities) Act, 1989 read with section 506 of the Indian Penal Code. Thereafter Bokaro Police Station Case No. 40 of 2009 was lodged against the appellant. However, final form was submitted in the criminal case; and though the complainant preferred protest petition, the same came to be dismissed by the Chief Judicial Magistrate through an order dt. 27.09.2012.

6. The disciplinary proceedings were however, continued under Rule 9 of Central Civil Service (Pension) Rules, 1972.

7. The enquiry officer held the appellant guilty of misconduct and furnished a copy of the enquiry report through a letter dt. 09.04.2012 to enable him to submit representation.

8. Instead of responding thereto, the appellant only mentioned about pendency of the above Writ petition before the Court and stated that he will file representation if the Court directs him to do so.

9. Opinion of Union Public Service Commission was sought for by way of consultation, and the UPSC advised that the ends of justice would be met if penalty of 20% cut in monthly pension on permanent basis and forfeiture of his entire gratuity, is imposed.

10. Copy of the advice of UPSC was sent to the appellant on 24.05.2013 for rebuttal and again the appellant responded stating about pendency of the

Writ Petition before the Court and stating that he will file representation, if the Court directs him to do so.

11. He also raised certain other contentions, which were considered by the competent authority and through an order dt. 03.09.2013, the 4th respondent, after considering the records and advice tendered by UPSC, held that the charges were proved against the appellant. He rejected appellant's explanation and imposed penalty of 20% cut in monthly pension on permanent basis and forfeiture of his entire gratuity.

12. The appellant challenged the said order of punishment in W.P. (S) No.679 of 2014 before this Court, but it was dismissed on 08.01.2018 granting him liberty to challenge the said punishment by way of departmental appeal. However, he did not file any such appeal.

13. The previous writ petition, W.P. (S) No. 4100 of 2011, also was dismissed on 27.08.2019 granting liberty to the appellant to file appeal, which was already observed in order dt.08.01.2018, while dismissing W.P. (S) No. 679 of 2014.

14. The appellant then filed a departmental appeal requesting that he be exonerated, but the same was rejected by the competent authority.

15. Challenging the order passed on 25.03.2020 by the appellate authority rejecting his appeal and also the order dt. 03.09.2013 of the 4th respondent, the appellant preferred W.P. (S) No. 3274 of 2020, raising the following three contentions:-

“a. The criminal case filed by the complainant ended in submission of final form against which protest petition was also dismissed and thus no case was made out against the petitioner in the criminal court.

b. The term ‘grave misconduct’ has to be considered in the light of the explanation to Rule 8 of the CCS (Pension) Rules as the condition precedent for attracting penalty of withholding or withdrawing pension gratuity is that the misconduct should come

within the definition of 'grave misconduct' but the conduct has been referred to as 'Serious Misconduct.'

c. The impugned order of punishment is harsh and disproportionate to the charges leveled and proved against the petitioner”.

16. The learned Single Judge, however, did not accept these contentions and dismissed the writ petition on 21.10.2022.

The judgment of the learned single Judge

17. The learned Single Judge held that dismissal of the complaint/protest petition by the criminal court has no bearing in the disciplinary proceedings since the basis of the said order of dismissal of the protest/complaint petition against the appellant by the court in the criminal case was (i) on account of technical plea that the alleged incident had not taken in public view and (ii) on account of non-examination of certain witnesses, in absence of corroborative evidence; and that the complainant failed to prove that the accused directed the complainant to withdraw the complaint.

18. The learned Single Judge held that dismissal of the complaint/protest petition was only on account of technical reasons and did not affect the departmental proceeding which was conducted after issuance of a charge memo and upon consideration of materials in the departmental proceeding.

19. The learned Single Judge also rejected the plea of the appellant that the misconduct attributed to the appellant was not a “grave misconduct” and it was only a “serious misconduct”.

The learned Single Judge held that even in the charge memo, the conduct of the appellant was described as “gross misconduct” and that the terms, “gross misconduct” and the term “grave misconduct” as defined in Rule 8 (5) of the CCS (Pension) Rules connote the same extent of gravity of charge with regard to its seriousness calling for disciplinary action under

Rule 9 of the aforesaid Rules empowering the competent authority to withhold pension/gratuity.

The learned Single Judge also rejected the plea of the appellant that Rule 9 could only be invoked if the Government servant had caused any pecuniary loss to the Government by placing reliance on the judgment of the Supreme Court in ***Union of India v. B Dev***¹.

20. The learned Single Judge also rejected the plea that punishment of withholding of entire gratuity and 20% of all future pension is disproportionate to the charge proved.

She held that the misconduct committed by the appellant was so serious that he does not deserve any sympathetic view and the punishment imposed against him cannot be said to be disproportionate much less shockingly disproportionate to the charges proved against the appellant.

21. Assailing these findings and the dismissal of the writ petition, this appeal is preferred by the appellant.

Consideration by the Court

22. We are in complete agreement with the reasoning of the learned Single Judge on all the three contentions urged by the counsel for the appellant.

23. The learned Single Judge has rightly held that dismissal of the complaint/protest petition was only on account of a technical reason that the alleged incident had occurred in the closed chamber of the appellant/accused and not in public view and so the offence under section 3 (i) (x) of the SC/ST (Prevention of Atrocities) Act, 1989 was not attracted.

¹ (1998) 7 SCC 691.

24. But the charge in the disciplinary enquiry was about abusing the subordinate on account of his caste and attempting to intimidate and humiliate him and such conduct was unbecoming of a Government servant and service in an armed force of the Union. This aspect was not decided in the Criminal Court.

25. As held by the Supreme Court in **Govind Das v. State of Bihar**², the acquittal of an employee in the criminal proceedings would be based on the view that the charges were beyond reasonable doubt, but since the standard of proof required to prove a charge of misconduct in departmental proceedings is not the same as that required to prove a criminal charge, the acquittal of the employee in the criminal case cannot be made the basis for setting aside the order for his termination from service, passed in the disciplinary proceedings on the basis of evidence adduced in the departmental proceedings conducted on the charges leveled against him.

26. Similar view was also taken in **Suresh Pathrella v. Oriental Bank of Commerce**³.

27. The term 'gross misconduct' used in the charge memo also means that the misconduct is a 'grave' misconduct i.e. extremely serious in nature and merely because the word 'grave' misconduct was not used in the charge memo, the appellant cannot take advantage of the same and contend that Rule 9 of the CCS (Pension) Rules cannot be invoked.

28. It is also settled law that punishment awarded by the disciplinary authority, unless shockingly disproportionate to the charge, should not be

² (1997) 11 SCC 361

³ (2006) 10 SCC 572

interfered with, in exercise of power of judicial review [*Devendra Swamy v. Karnataka SRTC*⁴ and *Mithilesh Singh v Union of India*⁵].

29. We cannot also overlook that the appellant was an employee in the CISF, which was a disciplined force; and when the charge is a grave one like in the instant case, leniency is not called for.

30. In *Dalbir Singh v. Union of India*⁶, the Supreme Court held that in service matters, though past conduct, both positive and negative will be relevant not only while referring to the misconduct but also in deciding the proportionality of the punishment, the court should be cautious while considering the case of an officer/soldier/employee of a disciplined force; and the same yardstick or sympathetic consideration as in other cases, cannot be applied.

31. So the plea of the counsel for the appellant about the past clean conduct of the appellant cannot be a ground to interfere with the quantum of punishment imposed by the disciplinary authority, which was confirmed by the appellate authority and also by the learned Single Judge.

32. Therefore, we do not find any merit in this appeal. It is accordingly, dismissed. No costs.

(M. S. Ramachandra Rao, C.J.)

(Gautam Kumar Choudhary, J.)

N.A.F.R.
APK

⁴ (2002) 9 SCC 644

⁵ (2003) 3 SCC 309

⁶ (2019) 7 SCC 84